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Key Legislative Developments Affecting Your Human Resources

Volume 5 | Issue 49 | December 5, 2014

House Passes Benefits and Employment Tax Legislation

The House passed legislation this week that would extend expired and expiring tax code rules — including those that would affect qualified transportation fringe benefit programs and multiemployer pension plans. The House also passed legislation that would transfer employment tax liability under certain circumstances to certified professional employer organizations. The legislation heads next to the Senate.

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Expiring Tax Provisions

The House of Representatives (House) passed [H.R. 5771](#) — the Tax Increase Prevention Act of 2014 — with strong bipartisan support on Wednesday. The bill would provide a one-year extension of many expired or soon-to-expire tax rules, but no permanent extenders. The bill has provisions that would affect multiemployer pension plans and qualified transportation fringe benefit programs. A plain English [summary](#) of the bill has been prepared by congressional staff.

The bill heads next to the Senate. It is not yet clear whether that chamber will approve the legislation. Earlier this year, the Senate attempted — but failed — to pass the EXPIRE Act, which would have generally provided a two-year extension of expired tax rules. (See our [May 16, 2014 Legislate](#) for more information on the earlier Senate attempt to pass the EXPIRE Act.) One favorable sign for Senate passage of H.R. 5771 is the degree of [bipartisan support](#) for the bill in the House — with 202 Republicans and 176 Democrats supporting the bill (and 46 members of both parties opposed).

Qualified Transportation Fringe Benefit Programs (Section 103 of the Bill)

H.R. 5771 would increase the maximum monthly dollar exclusion for certain qualified transportation fringe benefits. Prior to this year, the exclusion applicable to parking and mass transit benefits was the same dollar amount; however, that parity expired at the end of 2013, and the exclusion for parking benefits is currently \$250 per month while the exclusion for transit benefits is only \$130. H.R. 5771 would retroactively



restore that parity for 2014. If this provision is enacted, the IRS would likely issue guidance on its retroactive application. See our [January 17, 2013 FYI](#) for a description of IRS guidance that was issued the last time that the transit benefit was retroactively increased.

Multiemployer Plans (Sections 171 and 172 of the Bill)

H.R. 5771 would provide a one-year extension of the multiemployer pension plan funding rules in the Pension Protection Act of 2006 (PPA) that are set to expire at the end of 2014. These provisions are:

- **Automatic amortization extensions.** The legislation would change the deadline for applying to the IRS for extensions of amortization periods to December 31, 2015. The PPA permitted plans to obtain automatic approval of amortization extensions for unfunded liabilities for up to five years, provided that the plan certifies to meeting certain criteria. Currently, the PPA's deadline for submitting applications is December 31, 2014.
- **Shortfall funding method approvals.** The PPA provided for deemed approval of the adoption, use, or cessation of the shortfall funding method for certain plans. Absent the PPA provision, the IRS would have discretion over approval of a change in a plan's funding method. The PPA allows for deemed approvals for plan years beginning before January 1, 2015, and the legislation would change that cut-off to January 1, 2016.
- **Special funding rules for yellow, orange, and red zone plans.** The legislation would extend the sunset of the rules that apply to endangered (yellow zone), seriously endangered (orange zone), and critical (red zone) status plans by changing the sunset from December 31, 2014 to December 31, 2015. At that point, plans already operating under a funding improvement or rehabilitation plan for the plan year beginning before January 1, 2016 would continue such operations, and the funding improvement or rehabilitation plan under the tax and ERISA rules would continue to apply. The legislation only changes the dates of the sunset and does not answer open questions on the operation of the sunset, such as what happens to a plan that is certified to be in the yellow, orange, or red zones but is not yet operating under a funding improvement or rehabilitation plan.

Employment Taxes

The House also passed [H.R. 647](#) — the Achieving a Better Life Experience (ABLE) Act of 2014 — on Wednesday with strong bipartisan support. The bill would allow states to establish qualified ABLE programs. The programs would provide a new type of tax-preferred savings account that would allow eligible individuals with disabilities and their caregivers to pay for qualified disability-related expenses, such as education, housing, transportation, training, assistive technology, and medical expenses. The savings accounts, structured like section 529 college savings accounts, would be available to individuals with disabilities and their caretakers, whether or not they are covered by Medicaid or Supplemental Security Income (SSI).

Contributions into an ABLE account would not be tax deductible, but income earned by the accounts and distributions for qualified expenses would not be taxable. The first \$100,000 in ABLE account balances would not be counted toward SSI's \$2,000 individual resource limit, but distributions for housing would be counted as income for SSI purposes. If the account balance exceeds \$102,000, the individual's eligibility for SSI — but not for Medicaid — would be suspended. Certain contributions to the account would be protected in bankruptcy. A plain English [summary](#) of the bill has been prepared by congressional staff.

Among the provisions to offset the cost of the new savings account, the legislation (section 206 of the bill) would modify employment tax rules that currently apply when an employer hires workers through a professional employer organization (PEO). Taxes that would be affected include federal income tax withholding, FICA, and FUTA.

Under the bill, the IRS would be authorized to certify PEOs (that would be subject to an annual \$1,000 fee). A certified PEO would be treated as the employer and would be solely liable for the employment taxes on wages paid by the PEO to work site employees. A work site employee would be defined as an individual who performs services for a customer both (1) pursuant to a written contract between the PEO and the customer, and (2) at a work site where at least 85% of the individuals performing services for the customer are subject to one or more contracts with the PEO

(generally excluding employees who have not completed 6 months of service, normally work less than 17½ hours per week or no more than 6 months during a year, are under age 21, or covered by a collective bargaining agreement).

EEOC Report Released

Last week, Ranking Member Lamar Alexander (R-TN) of the Senate's Health, Education, Labor, and Pensions Committee released a report criticizing the EEOC's litigation tactics and failures, priorities, and lack of transparency. (See our [November 21, 2014 Legislate](#) for more information on employment law matters that are likely to be of interest to Senate Republicans in the next Congress.) The report expresses concern with: an increase in sanctions by courts; judicial criticism of the agency for misusing its authority, poor expert analysis and pursuit of novel cases unsupported by the law; a failure to conciliate charges; and fewer verdicts and settlements. The report also criticizes the EEOC for failure to allow public review or comment on novel, significant, or controversial guidance before its adoption.

To be certified, a PEO must satisfy a number of conditions, such as reporting requirements, posting a bond, and submitting audited financial statements. In addition, a PEO's service contract would have to meet certain requirements — for example, the PEO would have to assume responsibility for wage payments, tax liability, and employee benefits for work site employees regardless of whether the customer paid for services. Special rules would allow the PEO's customer to claim certain tax credits that are based on employee wages and employment taxes.

Under the [terms of the House's vote](#), H.R. 647 will be added to H.R. 5771, so that a combined bill incorporating both pieces of legislation will be sent to the Senate.

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